IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1228 of 2007

Kala .. Petitioner

Vs

1. State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-9.

2. The District Collector and
   District Magistrate
   Nagapattinam District
   Nagapattinam. . Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.Pon Pandiyan
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner is the wife of the detenu, Thennu @ Thennarsu, son of Rasu Thevar. The detenu was incarcerated by order dated 4.8.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 4.8.2007 in C.O.C.No.42/2007 against her husband, who is now confined at Central Prison, Tiruchirapalli, to set aside the

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same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. According to the detaining authority, viz., the second respondent, the detenu was found selling illicit arrack on 26.7.2007. The Inspector of Police, Prohibition Enforcement Wing, Nagapattinam apprehended the detenu and seized the illicit arrack found therein. The samples were sent for chemical analysis and it was found that the arrack contained 5.6% mg atropine per 100 ml. A case was registered in Crime No.1576/2007 under Section 4(1)(aa) r/w 4(1-A) of the Tamil Nadu Prohibition Act.

3. The second respondent, taking note of the above case as a ground case and finding that there are five adverse cases in Crime Nos.160/2005, 898/2005, 91/2006, 314/2006 and 1575/2007 on the file of Velippalayam Police Station for the offence punishable under Section 4(1)(aa) r/w 4(1-A) of the Tamil Nadu Prohibition Act and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered his detention dubbing him as a bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 4.8.2007 mainly on the ground of delay in sending the parawar remarks by the sponsoring authority, for considering the representation dated 10.8.2007. Hence, we do not propose to go into the other aspects of the case.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

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5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6.1. Coming to the case on hand, admittedly, objecting to the order of detention dated 4.8.2007, a representation was made on behalf of the detenu on 10.9.2007, which was received by the Government on 18.9.2007. Remarks were called for from the detaining authority on 19.9.2007, which was received by the detaining authority on 21.9.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 24.9.2007. The remarks of the sponsoring authority was received only on 23.10.2007, after a delay of twenty nine days. The detaining authority sent the remarks to the Government on 31.10.2007 and the same was received on 5.11.2007. Thereafter, the file was submitted on 6.11.2007 and the same was considered by the Under Secretary and Additional Secretary on 7.11.2007. The file was considered by the Minister on 9.11.2007. The rejection letter was prepared on 9.11.2007 itself. The rejection letter was sent to the detenu on 12.11.2007.

6.2. Even taking note of the intervening holidays, viz., 29.9.2007, 30.9.2007, 2.10.2007, 6.10.2007, 7.10.2007, 13.10.2007, 14.10.2007, 20.10.2007, 21.10.007 (being Saturday and Sunday), the delay of twenty days on the part of the Sponsoring Authority in sending the remarks, which has not been properly explained, cannot be excused.

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7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of twenty days in sending the parawar remarks by the Sponsoring Authority to the Detaining Authority, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention dated 4.8.2007 is set aside. The Thennu @ Thennarasu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Govt.,
   State of Tamilnadu,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Collector and
   District Magistrate
   Nagapattinam District
   Nagapattinam.

3. The Superintendent
   Central Prison
   Tiruchirapalli.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

H.C.P.No.1228 of 2007

JP(CO)
RVL 03.12.2007

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